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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 13, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELMER H.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of the Social Security
Administration,

Defendant.

No: 1:21-CV-03089-LRS

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 11, 12. This matter was submitted for consideration without oral argument. Plaintiff is represented by attorney Victoria B. Chhagan. Defendant is represented by Special Assistant United States Attorney Frederick Fripps. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion for Summary Judgment, ECF No. 11, **DENIES** Defendant's Motion for Summary Judgment, ECF No. 12, and **REMANDS** the case to the Commissioner for additional proceedings.

JURISDICTION

2 Plaintiff Elmer H.¹ filed an application for Supplemental Security Income
3 (SSI) on January 22, 2019, Tr. 80, and an application for Child's Insurance
4 Benefits (CIB) on March 26, 2019, Tr. 79. In both applications, Plaintiff alleged
5 disability since October 1, 2004, Tr. 193, 194, due to a learning disability, anxiety,
6 and depression, Tr. 224. Benefits were denied initially, Tr. 124-30, and upon
7 reconsideration, Tr. 135-48. A hearing before Administrative Law Richard Hlaudy
8 ("ALJ") was conducted on August 3, 2020. Tr. 38-78. Plaintiff was represented
9 by an attorney and testified at the hearing. *Id.* The ALJ also took the testimony of
10 vocational expert Mark Harrington and Plaintiff's mother. *Id.* The ALJ denied
11 benefits on November 10, 2020. Tr. 19-33. The Appeals Council denied
12 Plaintiff's request for review on May 3, 2021. Tr. 5-9. Therefore, the ALJ's
13 November 10, 2020 became the final decision of the Commissioner. This case is
14 now before this Court pursuant to 42 U.S.C. §§ 405(g), 1383(c). ECF No. 1.

BACKGROUND

16 The facts of the case are set forth in the administrative hearing and
17 transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner.

19 ¹In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's
20 first name and last initial, and, subsequently, Plaintiff's first name only, throughout
21 this decision.

1 Only the most pertinent facts are summarized here.

2 Plaintiff was 16 years old at the alleged onset date. Tr. 194. The highest
3 grade Plaintiff completed was the tenth grade in 2004. Tr. 225, 287. He reported
4 receiving special education throughout school. Tr. 287. He also reported that he
5 attempted a high school diploma course, but dropped out due to anxiety. Tr. 287.
6 Plaintiff reported no work history and no vocational training. Tr. 224, 287.

7 **STANDARD OF REVIEW**

8 A district court's review of a final decision of the Commissioner of Social
9 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
10 limited; the Commissioner's decision will be disturbed "only if it is not supported
11 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
12 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
13 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
14 (quotation and citation omitted). Stated differently, substantial evidence equates to
15 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
16 citation omitted). In determining whether the standard has been satisfied, a
17 reviewing court must consider the entire record as a whole rather than searching
18 for supporting evidence in isolation. *Id.*

19 In reviewing a denial of benefits, a district court may not substitute its
20 judgment for that of the Commissioner. "The court will uphold the ALJ's
21 conclusion when the evidence is susceptible to more than one rational

1 interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008).
2 Further, a district court will not reverse an ALJ’s decision on account of an error
3 that is harmless. *Id.* An error is harmless where it is “inconsequential to the
4 [ALJ’s] ultimate nondisability determination.” *Id.* (quotation and citation omitted).
5 The party appealing the ALJ’s decision generally bears the burden of establishing
6 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

7 FIVE-STEP EVALUATION PROCESS

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be
14 “of such severity that he is not only unable to do his previous work[,] but cannot,
15 considering his age, education, and work experience, engage in any other kind of
16 substantial gainful work which exists in the national economy.” 42 U.S.C. §
17 423(d)(2)(A).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. See 20 C.F.R. §§
20 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
21 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
3 404.1520(b), 416.920(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [her] physical or mental ability to do basic work activities,” the
9 analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the
10 claimant’s impairment does not satisfy this severity threshold, however, the
11 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
12 404.1520(c), 416.920(c).

13 At step three, the Commissioner compares the claimant’s impairment to
14 severe impairments recognized by the Commissioner to be so severe as to preclude
15 a person from engaging in substantial gainful activity. 20 C.F.R. §§
16 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
17 severe than one of the enumerated impairments, the Commissioner must find the
18 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

19 If the severity of the claimant’s impairment does not meet or exceed the
20 severity of the enumerated impairments, the Commissioner must pause to assess
21 the claimant’s “residual functional capacity.” Residual functional capacity

1 (“RFC”), defined generally as the claimant’s ability to perform physical and
2 mental work activities on a sustained basis despite his or her limitations, 20 C.F.R.
3 §§ 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of
4 the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant’s
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
8 If the claimant is capable of performing past relevant work, the Commissioner
9 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
10 If the claimant is incapable of performing such work, the analysis proceeds to step
11 five.

12 At step five, the Commissioner considers whether, in view of the claimant’s
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant’s age,
16 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
17 416.20(a)(4)(v). If the claimant is capable of adjusting to other work, the
18 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
19 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
20 work, analysis concludes with a finding that the claimant is disabled and is
21 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

The claimant bears the burden of proof at steps one through four. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work “exists in significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

THE ALJ'S FINDINGS

At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity since the alleged onset date, October 1, 2004. Tr. 21. At step two, the ALJ found that Plaintiff has the following severe impairments: obesity; neurocognitive disorder; depression; and anxiety. Tr. 22. At step three, the ALJ found that Plaintiff does not have an impairment or combination of impairments that meets or medically equals the severity of a listed impairment. Tr. 22. The ALJ then found that Plaintiff has the RFC to perform medium work as defined in 20 CFR §§ 404.1567(c), 416.967(c) with the following limitations:

He can lift/carry 50 pounds occasionally and 25 pounds frequently; stand and walk for 6 hours and sit for 6 hours in an 8-hour workday with normal breaks. He is limited to work that requires him to perform simple repetitive tasks. He cannot work at fast-paced production quotas but can perform goal-oriented work. He is limited to superficial interaction with coworkers and public.

Tr. 27. At step four, the ALJ found that Plaintiff has no past relevant work. Tr. 32. At step five, the ALJ found that considering Plaintiff's age, education, work

1 experience, and RFC, there are other jobs that exist in significant numbers in the
2 national economy that Plaintiff could perform, including positions as a janitor,
3 courtesy clerk, and cleaner housekeeper. Tr. 32-33. On that basis, the ALJ
4 concluded that Plaintiff had not met the definition of disability prior to age 22 for
5 the purpose of the CIB application filed on March 26, 2019, or the definition of
6 disability for the purpose of the SSI application filed on January 22, 2019 . Tr. 33.

7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying
9 him CIB under Title II and SSI under Title XVI of the Social Security Act. ECF
10 No. 9. Plaintiff raises the following issues for this Court's review:

11 1. Whether the ALJ properly addressed lay witness statements; and
12 2. Whether the ALJ properly addressed medical source statements.

13 DISCUSSION

14 1. Lay Witness Statements

15 In April of 2019, Plaintiff's mother completed a Third-Party Function
16 Report Form. Tr. 239-46. She stated that Plaintiff has trouble being in public, Tr.
17 239, that he is afraid of driving, Tr. 242, that he does not spend time with others,
18 Tr. 243, and that his impairments affect his talking, memory, completing tasks,
19 concentration understanding, and following instructions, Tr. 244. She also testified
20 at the hearing, stating that “[i]t's hard to tell him to do stuff that he's never done
21 before, because then he can't - - I have to stop showing over and over until he can

1 connect with it. I mean, he has a hard time talking, he loses his track of mind, I
2 guess, or whatever they call that, your train of thought.” Tr. 62-63. She stated that
3 he struggles to learn new tasks, and often goes very slowly or makes mistakes. Tr.
4 63-64. She stated that he gets frustrated, paces, and moves his hands “real
5 quickly.” Tr. 64. The ALJ failed to address the statements from Plaintiff’s mother
6 in his decision. Tr. 19-32. Plaintiff relies on Ninth Circuit case law requiring
7 ALJ’s to discuss evidence provided by lay witnesses. ECF No. 11 at 19-20.
8 Defendant argues that under the new regulations, the ALJ is not required to discuss
9 lay witness evidence in his decision. ECF No. 12 at 7-8.

10 Historically, the Ninth Circuit had held that lay witness testimony is
11 “competent evidence” as to “how an impairment affects [a claimant’s] ability to
12 work.” *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050 (9th Cir. 2006); *see also*
13 *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993) (“[F]riends and family
14 members in a position to observe a claimant’s symptoms and daily activities are
15 competent to testify as to her condition.”). The Ninth Circuit held that the ALJ can
16 only reject the statements of a lay witness by providing reasons germane to the
17 opinion. *Dodrill*, 12 F.3d at 919. Social Security Rulings further recognized the
18 importance of statements from friends and family by requiring decision makers to
19 consider such evidence under some of the same factors they considered medical
20 source opinions:

21 In considering evidence from “non-medical sources” who have not seen
the individual in a professional capacity in connection with their

1 impairments, such as spouses, parents, friends, and neighbors, it would
2 be appropriate to consider such factors as the nature and extent of the
3 relationship, whether the evidence is consistent with other evidence,
4 and any other factors that tend to support or refute the evidence.

5 S.S.R. 06-03p (*rescinded Mar. 27, 2017*).

6 The “new regulations” that Defendant refers to applies to cases filed after
7 March 27, 2017, and states that “[w]e are not required to articulate how we
8 considered evidence from nonmedical sources using the requirements in
9 paragraphs (a)-(c) in this section.” 20 C.F.R. §§ 404.1520c(d), 416.920c(d).

10 District courts are divided as to whether or not 20 C.F.R. §§ 404.1520c(d),
11 416.920c(d) relieves the ALJ from the requirement to address the evidence
12 provided by lay witnesses. *Compare, e.g., Tanya L. L. v. Comm'r of Soc. Sec.*
13 *Admin.*, No. 3:20-cv-78-BR, 2021 WL 981492, at *7 (D. Or. Mar. 16, 2021)
14 (noting that the ALJ “does not have to use the same criteria as required for medical
15 sources,” but that the amended regulations “do not eliminate the need for the ALJ
16 to articulate his assessment of the lay-witness statements.”), *Joseph M. R. v.*
17 *Comm'r of Soc. Sec. Admin.*, No. 3:18-1779-BR, 2019 WL 4279027, at *12 (D. Or.
18 Sept. 10, 2019) (stating although “the Commissioner is ‘not required to articulate
19 how we consider evidence from nonmedical sources’ using the same criteria for
20 medical sources, it does not eliminate the need for the ALJ to articulate his
21 consideration of lay-witness statements and his reasons for discounting those
statements”), and *Shirley C. v. Comm'r, Soc. Sec. Admin.*, No. 1:20-CV-01212-

1 MK, 2021 WL 3008265, at *7 (D. Or. July 15, 2021) (finding that “the ALJ failed
2 to supply a germane reason to reject the lay witness statements” and his “failure to
3 explicitly reject the remaining portions of lay witness statements was error”) *with*
4 *Kava v. Kijakazi*, No. 20-00385 ACK-WRP, 2021 WL 4267505, at *7 (D. Haw.
5 Sep. 20, 2021) *citing Revisions to Rules Regarding the Evaluation of Medical*
6 *Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017) (“Depending on
7 the unique evidence in each claim, it may be appropriate for an adjudicator to
8 provide written analysis about how he or she considered evidence from nonmedical
9 sources, particularly in claims for child disability.”), *and Wendy J.C. v. Saul*, No.
10 3:19-cv-01434, 2020 WL 6161402, at *12 n.9 (D. Or. Oct. 21, 2020) (“[T]he ALJ
11 is no longer required to provide reasons germane to lay witnesses to reject their
12 testimony.”).

13 The issue of whether the new regulations promulgated in 2017 displace
14 Ninth Circuit precedent has been addressed by this Court in relation to the
15 treatment of medical opinion evidence:

16 The agency has “exceptionally broad authority” under the Social
17 Security Act (SSA) “to prescribe the standards” for establishing
18 qualification for DIB. *See Bowen v. Yuckert*, 482 U.S. 137, 145, 107
19 S.Ct. 2287, 96 L.Ed.2d 119 (1987) (internal quotation omitted). The
20 SSA requires the agency to seek and consider treating medical source
21 evidence, but it does not specify how the ALJ must evaluate that
evidence. 42 U.S.C. § 423(d)(5)(B). The agency may change its
policies when administering the SSA. “[T]he whole point of *Chevron*
is to leave the discretion provided by the ambiguities of a statute with
the implementing agency.” *Nat'l Cable & Telecomms. Ass'n v. Brand*
X Internet Servs., 545 U.S. 967, 981, 125 S.Ct. 2688, 162 L.Ed.2d 820
(2005) (internal quotation omitted). “[A]n agency’s intervening

1 interpretation of a statute command[s] deference in the face of contrary
2 circuit precedent.” *Lambert v. Saul*, 980 F.3d 1266, 1274-75
(interpreting *Brand X*, 545 U.S. at 981–82, 125 S.Ct. 2688) (gathering
cases).

4 *Emilie K. v. Saul*, No. 2:20-CV-00079-SMJ, 2021 WL 864869, *3-4 (E.D. Wash.
5 Mar. 8, 2021), *reversed on other grounds*, No. 21-35360 (9th Cir. Dec. 10, 2021).

6 Therefore, this Court turns to the agency’s interpretation of the new regulations:

7 Sometimes, the individual, family members, and other nonmedical
8 sources of evidence can provide helpful longitudinal evidence about
9 how an impairment affects a person’s functional abilities and
10 limitations on a daily basis. In claims for child disability, we often
11 receive functional evidence from nonmedical sources, such as
12 testimony, evaluations, and reports from parents, teachers, special
13 education coordinators, counselors, early intervention team members,
14 developmental center workers, day care center workers, social workers,
15 and public and private social welfare agency personnel. Depending on
16 the unique evidence in each claim, it may be appropriate for an
17 adjudicator to provide written analysis about how he or she considered
18 evidence from nonmedical sources, particularly in claims for child
19 disability.

20 82 Fed. Reg. at 5850.

21 The Court finds that considering the “unique evidence” in this case, it was
22 appropriate for the ALJ to provide a written analysis on how he considered the
23 evidence from Plaintiff’s mother and the failure to do so was a harmful error.
24 Plaintiff is alleging disability since he was a child based on only mental health
25 impairments. Tr. 224. The medical evidence in the record is extremely limited
26 with records spanning from 2018 to 2020. Treatment records show that providers
27 limited Plaintiff’s treatment to medication management because his symptoms

1 were potentially the result of a traumatic brain injury received at the age of 2 in a
2 motor vehicle accident. Tr. 373, 377, 384 (stating there was a lack of issues to
3 address in therapy). Objective evidence shows moderate deficits on the Trials
4 Making Tests, Tr. 287, so the only cognitive testing in the record demonstrate a
5 cognitive impairment is present. Here, Plaintiff's treatment record is limited and
6 the Agency has not ordered additional cognitive testing to discern the extent of his
7 limitations resulting from the traumatic brain injury. Therefore, statements from
8 Plaintiff's family members as to his daily functioning is vital to assess his RFC.
9 The ALJ's failure to articulate how he considered this vital evidence was an error.
10 *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (The Ninth Circuit
11 has stated that "we still demand that the agency set forth the reasoning behind its
12 decisions in a way that allows for meaningful review.").

13 Defendant argues that any error would be harmless because the statements
14 from Plaintiff's mother were substantially similar to Plaintiff's own statements and
15 the ALJ's treatment of Plaintiff's statements went unchallenged. ECF No. 12 at 8.
16 However, Defendant failed to articulate how Plaintiff's statements were
17 substantially similar to those provided by his mother. Plaintiff's mother gave
18 specific examples of Plaintiff attempting to learn new skills and struggling to
19 follow instructions. Tr. 63-34. Furthermore, she narrated how Plaintiff responds
20 to frustration. Tr. 64. She provided specific examples of Plaintiff's alleged
21 limitations, such as not being able to get all the items at the grocery store even

1 when a list is provided, not remembering to take his medication, overdrawing his
2 back account because he does not understand pending transactions, and getting lost
3 when navigating with directions. Tr. 65-68. Therefore, Defendant's mere
4 assertion that the statements are similar does not sway the Court's determination
5 that remand is required to remedy the ALJ's failure to discuss the statements from
6 Plaintiff's mother.

7 **2. Medical Source Opinions**

8 Plaintiff challenges the ALJ's treatment of the opinion from Tasmyn Bowes,
9 Psy.D. ECF No. 11 at 5-18.

10 For claims filed on or after March 27, 2017, new regulations apply that
11 change the framework for how an ALJ must weigh medical opinion evidence. , 82
12 Fed. Reg. 5844; 20 C.F.R. §§ 404.1520c, 416.920c. The new regulations provide
13 that the ALJ will no longer give any specific evidentiary weight to medical
14 opinions or prior administrative medical findings, including those from treating
15 medical sources. 20 C.F.R. §§ 404.1520c(a), 416.920c(a). Instead, the ALJ will
16 consider the persuasiveness of each medical opinion and prior administrative
17 medical finding, regardless of whether the medical source is an Acceptable
18 Medical Source. 20 C.F.R. §§ 404.1520c(c), 416.920c(c). The ALJ is required to
19 consider multiple factors, including supportability, consistency, the source's
20 relationship with the claimant, any specialization of the source, and other factors
21 (such as the source's familiarity with other evidence in the file or an understanding

1 of Social Security's disability program). *Id.* The regulations emphasize that the
2 supportability and consistency of the opinion are the most important factors, and
3 the ALJ must articulate how he considered those factors in determining the
4 persuasiveness of each medical opinion or prior administrative medical finding. 20
5 C.F.R. §§ 404.1520c(b), 416.920c(b). The ALJ may explain how he considered
6 the other factors, but is not required to do so, except in cases where two or more
7 opinions are equally well-supported and consistent with the record. *Id.*

8 Supportability and consistency are further defined in the regulations:

9 (1) *Supportability*. The more relevant the objective medical evidence
10 and supporting explanations presented by a medical source are to
11 support his or her medical opinion(s) or prior administrative medical
finding(s), the more persuasive the medical opinions or prior
administrative medical finding(s) will be.

12 (2) *Consistency*. The more consistent a medical opinion(s) or prior
13 administrative medical finding(s) is with the evidence from other
14 medical sources and nonmedical sources in the claim, the more
persuasive the medical opinion(s) or prior administrative medical
finding(s) will be.

15 20 C.F.R. §§ 404.1520c(c), 416.920c(c).²

18 ²The parties disagree over whether Ninth Circuit case law continues to be
19 controlling in light of the amended regulations, specifically whether an ALJ is still
20 required to provide specific and legitimate reasons for discounting a contradicted
21 opinion from a treating or examining physician. ECF Nos. 11 at 5-6, 12 at 4-5. As

1 The factor of consistency requires the ALJ to consider how consistent the
2 opinion “is with the evidence from other medical sources and nonmedical sources
3 in the claim.” 20 C.F.R. §§ 404.1520c(c), 416.920c(c). This case is being
4 remanded for the ALJ to properly consider statements from a nonmedical source,
5 Plaintiff’s mother, that was not discussed in the ALJ’s decision. *See supra*.
6 Therefore, the ALJ will also reconsider Dr. Bowes’ opinion on remand in light of
7 the evidence presented from Plaintiff’s mother.

8 **CONCLUSION**

9 Here, Plaintiff requests that the case be remanded for additional proceedings.
10 ECF No. 11 at 4-5. The Court finds that further administrative proceedings are
11 appropriate. *See Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04
12 (9th Cir. 2014) (remand for benefits is not appropriate when further administrative
13 proceedings would serve a useful purpose). Upon remand, the ALJ will readdress
14 the evidence provided by Plaintiff’s mother and the opinion of Dr. Bowes.
15 Considering Plaintiff alleges limitations resulting from a traumatic brain injury,
16 additional cognitive testing is also appropriate on remand. Furthermore, he will
17 call a vocational expert to testify at any remand proceedings.

18 ///

19
20 addressed above, this Court has previously concluded that the regulations displace
21 Ninth Circuit precedence. *Emilie K.*, 2021 WL 864869 at *3-4.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Summary Judgment, ECF No. 11, is **GRANTED**,

and the matter is **REMANDED** to the Commissioner for additional

proceedings.

2. Defendant's Motion for Summary Judgment, ECF No. 12, is **DENIED**.

The District Court Clerk is directed to enter this Order and provide copies to

counsel. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

DATED April 13, 2022.



LONNY R. SUKO
Senior United States District Judge